




CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 25, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0184

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion	Not Sustained - Lawful and Proper (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

Named Employee #1 (NE#1) responded to a domestic disturbance call involving the Complainant and Community Member #1 (CM#1)—the Complainant's ex-partner. The Complainant alleged NE#1 allowed CM#1 to enter his apartment intoxicated, to threaten him, and to collect CM#1's belongings. The Complainant further alleged NE#1 allowed CM#1 to drive from the apartment while intoxicated.

ADMINISTRATIVE NOTE:

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview NE#1 in this case.

On June 8, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

OPA received a complaint and opened an intake investigation. During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch (CAD) call report, body-worn video (BWV), incident report, and email correspondence.

On April 28, 2023, the Complainant filed a web-based complaint. The Complainant wrote that CM#1, who lived with the Complainant, was "intoxicated on cocaine and alcohol" and threatened him "with violence." The Complainant wrote that responding officers allowed CM#1 back in the apartment to pack his belongings, then allowed him to drive away "while drunk and high on cocaine."

On April 27, 2023, at 6:35 PM, CAD call remarks noted that the reporting party's ex-partner was intoxicated and high, punched the reporting party's door, and refused to leave. CAD call remarks noted that the reporting party's ex-partner



broke into the reporting party's apartment on April 20, 2023, but had no weapons. CAD call remarks also noted the reporting party's ex-partner was last seen driving in an unknown direction from the parking lot.

Witness Officer #1's (WO#1) BWV captured the following events. WO#1 and Witness Officer #2 (WO#2) arrived at the apartment and met CM#1 outside. CM#1 said he dated and lived with the Complainant but recently broke up. CM#1 said he moved out a few days ago and returned to the apartment to retrieve his belongings, but the Complainant refused to let him in. NE#1 arrived and went to the Complainant's apartment. WO#1, WO#2, and CM#1 stayed outside.

NE#1's BWV captured the following events. The Complainant told NE#1 that CM#1 was dangerous because CM#1 banged on the door, threatened to assault him, and damaged the apartment. The Complainant repeatedly said CM#1 was not allowed to enter the apartment but acknowledged CM#1 was not legally evicted. NE#1 said CM#1 had residency rights, so CM#1 would need to voluntarily leave or the Complainant would need to evict CM#1 or obtain a court order against CM#1. NE#1 said officers could stand by while CM#1 retrieved his belongings. The Complainant agreed to this arrangement. The Complainant said, "[CM#1's] a drug addict. [CM#1's] probably drunk and high on cocaine right now." NE#1 radioed WO#1 and WO#2 for CM#1 to enter. After WO#1, WO#2, and CM#1 entered the apartment, CM#1 retrieved his belongings while the officers stood by. CM#1 and the officers then left the apartment.

NE#1 wrote an incident report consistent with the events captured on BWV. NE#1 wrote, "[CM#1] had displayed no signs of intoxication or impairment."

In an email to OPA, the Complainant wrote, "I did not appreciate that I told [officers that CM#1] was intoxicated and had been drinking and doing cocaine and [officers] allowed [CM#1] to drive away in his car." The Complainant also wrote that CM#1 should not have been allowed to threaten him and retrieve belongings inside the apartment.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion

The Complainant alleged that NE#1 exercised unreasonable discretion.

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[d]iscretion is proportional to the severity of the crime or public safety issue being addressed." SPD Policy 5.001-POL-6.

Here, the Complainant made two allegations. First, the Complainant alleged NE#1 allowed CM#1 to enter his apartment intoxicated, to threaten him, and to collect CM#1's belongings. NE#1 permitted CM#1 to enter the apartment because NE#1 determined that CM#1 had residency rights, and there was no eviction or court order that prevented CM#1 from reentering. Although the Complainant fervently refused to allow CM#1 to enter, the Complainant's concern appeared to be assuaged when NE#1 said that officers would stand by while CM#1 gathered his belongings. NE#1 did not take a side in the dispute but, instead, assured the peace. See 15.410-POL-6 (requiring that officers "will stay present with both parties while property is being gathered and transported and will remain on the scene until the parties have separated").



Second, the Complainant alleged NE#1 allowed CM#1 to drive from the apartment while intoxicated and “high on cocaine.” There is no evidence to corroborate the Complainant’s allegation. NE#1 documented in his incident report that “[CM#1] had displayed no signs of intoxication or impairment.” BWV showed three officers in close quarters with CM#1 throughout the incident, including a period where WO#1 was in an elevator with CM#1. No officer questioned CM#1’s sobriety. Furthermore, OPA reviewed BWV but did not observe CM#1 slurring his words, showing signs of instability, or otherwise displaying any indicators of impairment. Based on the evidence provided, there was no reason for the officers to prevent CM#1 from driving away. NE#1 exercised reasonable discretion throughout the entire incident.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**